

MINUTES OF THE OPEN SESSION OF THE RHODE ISLAND ETHICS COMMISSION

April 8, 2008

The Rhode Island Ethics Commission held its 8th meeting of 2008 at 9:00 a.m. at the Rhode Island Ethics Commission conference room, located at 40 Fountain Street, 8th Floor, Providence, Rhode Island, on Tuesday, April 8, 2008, pursuant to the notice published at the Commission Headquarters and at the State House Library.

The following Commissioners were present:

**James Lynch, Sr., Chair Deborah M. Cerullo SSND
Barbara R. Binder, Vice Chair J. William W. Harsch
Ross Cheit, Secretary**

Also present were Kathleen Managhan, Commission Legal Counsel; Kent A. Willever, Commission Executive Director; Katherine D'Arezzo, Senior Staff Attorney; Staff Attorneys Jason Gramitt, Dianne L. Leyden and Esme DeVault; and Commission Investigators Steven T. Cross, Peter J. Mancini and Steven Branch.

At approximately 9:09 a.m., the Chair opened the meeting. The first order of business was a motion to approve minutes of the Open Session held on March 25, 2008. Upon motion made by

Commissioner Binder and duly seconded by Commissioner Cheit, it was unanimously

VOTED: To approve the minutes of the Open Session held on March 25, 2008.

The next order of business was advisory opinions. The advisory opinions were based on draft advisory opinions prepared by the Commission Staff for review by the Commission and were scheduled as items on the Open Session Agenda for this date. The first advisory opinion was that of Richard Kerbel, the Director of Administration for the City of Providence. Staff Attorney Gramitt presented the Commission Staff recommendation. The petitioner was present. In response to Commissioner Cheit, the petitioner advised that he sought the opinion out of an abundance of caution. Commissioner Cheit commented that, given the composition of the House Committee at issue, it would appear that several of its members are expected to have an interest in the pension system. Upon motion made by Commissioner Cheit and duly seconded by Commissioner Binder, it was unanimously,

VOTED: To issue an advisory opinion, attached hereto, to Richard Kerbel, the Director of Administration for the City of Providence.

The next advisory opinion was that of Joseph A. Balducci, Chief Financial Officer for the Cranston School District. Staff Attorney

DeVault presented the Commission Staff recommendation. The petitioner was present with Attorney McAllister. The petitioner stated his belief that he should be allowed to participate in contract negotiations and suggested that he could remain in his office and provide financial information if asked. He represented that he has removed himself from doing taxes for employees of the Cranston School District out of an abundance of caution. Commissioner Binder agreed with the petitioner and indicated that the integrity of the process would not be compromised by his crunching numbers, as opposed to giving advice. Commissioner Cheit concurred. Staff Attorney DeVault stated that if the Commission views his participation as a ministerial matter it may amend the draft opinion.

In response to Commissioner Cheit, the petitioner clarified that he would not be asked for policy advice. In response to Commissioner Cerullo, the petitioner informed that he has an assistant who could provide the financial information. In response to Chair Lynch, the petitioner advised that he has been employed by the Cranston School Department for eleven years and has provided financial information during two prior contract negotiations. In response to Commissioner Cerullo, he clarified that the Construction Academy is a functioning school. Chair Lynch suggested that the Commission vote on the two issues separately. Upon motion made by Commissioner Harsch and duly seconded by Commissioner Cheit to adopt the Commission Staff recommendation regarding the first issue, there was discussion.

Commissioner Binder stated her disagreement with the recommendation given that the petitioner performs an essentially ministerial duty. Commissioner Cerullo voiced her concern regarding the appearance of impropriety and noted that providing financial information is a huge aspect of contract negotiations. Chair Lynch expressed his concern for potential conflicts of interest and commented that the petitioner has a qualified assistant who could handle the matter. Commissioner Harsch concurred. Upon the original motion, it was

VOTED: To adopt the Commission Staff recommendation as to the petitioner's ability to participate in contract negotiations.

AYES: Deborah M. Cerullo SSND, William J. Harsch and James Lynch, Sr.

NOES: Ross Cheit and Barbara R. Binder.

The Commission did not adopt the Commission Staff recommendation due to a lack of five affirmative votes.

Upon motion made by Commissioner Harsch and duly seconded by Commissioner Cerullo, it was unanimously

VOTED: To adopt the Commission Staff recommendation as to the petitioner's ability to provide tax preparation services for members

of Local 1322.

Legal Counsel Managhan clarified that no advisory opinion would issue with respect to the petitioner's ability to participate in contract negotiations. She explained that, while he is not expressly prohibited from doing so, he does not have safe harbor.

The next advisory opinion was that of John F. Ward, the Finance Director for the Town of Lincoln. Staff Attorney DeVault presented the Commission Staff recommendation. The petitioner was present. In response to Commissioner Cheit, the petitioner stated that he sought the opinion to make his involvement in the authorization chain of command clear for the record and also noted his membership on the Woonsocket City Council. Upon motion made by Commissioner Cheit and duly seconded by Commissioner Binder, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to John F. Ward, the Finance Director for the Town of Lincoln.

At approximately 9:46 a.m., upon motion made by Commissioner Cheit and duly seconded by Commissioner Binder, it was unanimously

VOTED: To go into Executive Session pursuant to R.I. Gen. Laws § 42-46- 5(a)(4), to wit:

a.) Motion to approve minutes of Executive Session held on March 25, 2008.

**b.) In re: Frank A. Ciccone, III,
Complaint No. 2007-3**

**c.) In re: Frederick C. Cavallaro,
Complaint No. NF2008-1**

d.) Preliminary Investigation No. 2008-1

e.) Motion to return to Open Session.

The Commission reconvened in Open Session at approximately 10:29 a.m. The next order of business was a Motion to Seal minutes of the Executive Session held on April 8, 2008. Upon motion made by Commissioner Cerullo and duly seconded by Commissioner Binder, it was unanimously

VOTED: To seal the minutes of the Executive Session held on April 8, 2008.

Chair Lynch reported that the Commission took the following actions in Executive Session: 1) approved the minutes of the March 25, 2008 Executive Session; 2) approved an Informal Resolution & Settlement

in Complaint No. 2007-3, In re: Frank A. Ciccone, III; 3) voted in Complaint No. NF2008-1, In re: Frederick C. Cavallaro, that probable cause exists that the Respondent violated R.I. Gen. Laws § 36-14-16 by failing to file a 2006 Financial Statement; and 4) extended the time for filing the Preliminary Investigation Report in Preliminary Investigation No. 2008-1 until May 20, 2008.

The next order of business was a Motion Hearing in the matter of In re: Frederic C. Crowley, Complaint No. 2007-2. Commission Prosecutor D'Arezzo informed that the Respondent, who had been noticed for 10:00 a.m., is not present and has not contacted the Commission Office. The Commission first heard the Prosecution's Motion to Dismiss. Commission Prosecutor D'Arezzo provided the background to the Complaint and advised that, immediately after its issuance of the Finding of Probable Cause, the Commission articulated its intent to take regulatory action to provide that a public official's vote to elect himself to an officer position on his public body would not run afoul of the Code of Ethics. In light of the Commission's adoption of Regulation 7004 on March 25, 2008, Commission Prosecutor D'Arezzo requested that the Complaint be dismissed with prejudice and argued that the Findings of Probable Cause should not be vacated. Upon motion made by Commissioner Cheit and duly seconded by Commissioner Binder to grant the Prosecution's Motion to Dismiss, there was discussion.

In response to Commissioner Harsch, Legal Counsel Managhan

stated that she did not believe the fact that the regulation was adopted after the probable cause finding is problematic. She advised that the Commission could proceed with adjudication, but it also has the ability to dismiss at its discretion. She noted that the Commission had expressed the need both to find probable cause and take ameliorative action. In response to Commissioner Cerullo's concerns, Legal Counsel Managhan advised that if the Commission does not dismiss the matter, it must proceed with either adjudication or settlement.

Commissioner Cheit commented that this case caused the Commission to quickly take action to change its regulations. Commissioner Cerullo noted that the Respondent chose to engage in the conduct when he had been told it could be a violation of the Code.

Chair Lynch explained that there may have been some confusion as to whether the advisory opinion concerned just the situation where both he and his spouse were elected. Commissioner Binder stated that the Prosecutor's submission that the Finding of Probable Cause should not be vacated seems to address that concern.

Commissioner Cheit clarified that dismissal would be based upon the Prosecution's motion, relying solely upon Regulation 7004. Upon the original motion, it was unanimously

VOTED: To grant the Prosecution's Motion to Dismiss.

Upon advice of Legal Counsel Managhan, Chair Lynch stated that the Commission would pass the Respondent's Motion to Vacate Order & Finding of Probable Cause and to Dismiss Complaint on the agenda.

At Chair Lynch's request, and upon motion made by Commissioner Cheit and duly seconded by Commissioner Binder, it was unanimously

VOTED: To amend the agenda to include discussion of legislation pending before the House and Senate today.

Staff Attorney Gramitt advised that House Bill 7674 and Senate Bill 2871 will be heard before the House and Senate Judiciary Committees this evening. He advised that the House bill would make it a violation of the Code for any member of the General Assembly employed by a government employees' union to vote on legislation relating to employee benefits. He explained that the Senate bill goes further, providing that no member of the General Assembly may participate in the legislative process regarding his profession or that of his spouse or family member. He indicated that he would attend the hearings as an observer and report back to the Commission.

The next order of business was Discussion regarding ending the moratorium on complaints alleging non-disclosure of relationships with non-profit organizations. Staff Attorney Gramitt advised that six years ago the Commission entered a moratorium on accepting such

complaints; however, Regulation 17008, which was adopted on March 25th, clarifies that leadership positions with not-for-profit organizations must be disclosed. Upon motion made by Commissioner Binder and duly seconded by Commissioner Harsch, it was unanimously

VOTED: To remove the moratorium on complaints alleging non-disclosure of relationships with non-profit organizations.

The next order of business was Discussion regarding Regulatory Agenda & Scheduling of Workshops. With respect to the class exception, Staff Attorney Gramitt advised that the Staff would perform a survey of how other states' legislatures deal with the issue. Commissioner Binder and Cheit voiced support for such an approach. Commissioner Cheit suggested that the workshop be scheduled now to allow interested organizations time to think about it. In response to Chair Lynch and Commissioner Cheit, Staff Attorney Gramitt stated that June 3rd would be scheduled for a class exception workshop. Commissioner Binder suggested soliciting input from interested parties. Staff Attorney Gramitt indicated that notice would be given to groups such as the legislature, Operation Clean Government, Common Cause and the RI League of Cities and Towns.

Commissioner Binder stated that it would be helpful to have any written comments received from interested parties available to the

Commission at the workshop. Commissioner Cheit suggested that the Staff's research could generate some options for consideration. In response to Commissioner Cheit, Staff Attorney Gramitt informed that the issues of confidentiality and the complainant's role remain on the Commission's list for potential action. Commissioner Binder also suggested addressing the standard of proof used for the failure to file financial disclosure statements. Staff Attorney Gramitt stated that the Staff could prepare a memorandum on the issue. In response to Commissioner Cheit, Staff Attorney Gramitt advised that in prior discussions the Commission had reached agreement regarding the complainant's receipt of a draft copy of the settlement proposal, but other issues were raised, including the complainant's ability to speak at hearing. Commissioner Binder suggested having a separate workshop regarding those issues, along with the standard of proof. Commissioner Cheit suggested that the Staff also advise the interested parties solicited for input on the class exception of future workshop topics. Chair Lynch informed the members that they should review the regulations and identify any they believe need to be changed.

The next order of business was the Director's Report. Executive Director Willever advised that there are eight advisory opinions, eight complaints and one preliminary investigation pending. He informed that one formal APRA request has been granted since the last meeting. He commented on correspondence received from Professor Killelea of URI regarding Staff Attorney Gramitt's recent ethics

presentation. He advised that the Commission's memorandum in the Irons litigation will be filed by April 17th and in May the Commission will be advertising for Legal Counsel.

The next order of business was New Business. Commissioner Harsch advised that he had recused from active participation as a Commissioner while he consulted with the RI Supreme Court's staff as to whether R.I. Gen. Laws § 36-14-8(f) limited an attorney on the Commission from appearing before governmental bodies. Commissioner Harsch represented that he was referred to the definition of "to influence," which involves informal contacts and attempting to get things done other than by advocacy. He stated that he received an informal opinion that advocacy is not prohibited by the statute. He indicated that the provision is not an attempt to regulate the practice of law and does not create a problem with the Court's supremacy in that area.

Commissioner Cheit expressed his interest in the statutory language and its interpretation, and he noted that the provision applies to all members, not just attorneys. He questioned whether he could speak on someone's behalf before the Parole Board but be barred from appearing as that person's attorney. He inquired whether the language has ever been tested. Director Willever explained that the members of the Commission Staff appear before other public bodies as representatives of the Commission on matters such as legislation and budgets.

In response to Legal Counsel Managhan, Commissioner Harsch informed that he is not at liberty to identify the individual with whom he consulted since he did not receive a written opinion. Commissioner Harsch stated that if the Commission believes the interpretation he received is incorrect, he is prepared to step down. Commissioner Cheit expressed that the members of the Commission retain their first amendment rights.

At approximately 11:15 a.m., upon motion made by Commissioner Cheit and duly seconded by Commissioner Binder, it was unanimously

VOTED: To adjourn.

Respectfully submitted,

Ross Cheit
Secretary